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September 27, 1996

William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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SEP 27 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Section 257 Proceeding to Identify and Eliminate
Market Entry Barriers for Small Businesses

Dear Mr. Caton:

On August 23, 1996, Ms. Faye Brown-Blackwell, owner of KZWA-FM radio in Lake Charles, Louisiana, filed comments in the above captioned proceeding. The deadline for filing initial comments, however, was extended until September 27, 1996.

Please accept the attached revised Comments in place of those currently on file. Please call if you have any questions.

Very truly yours,

Thomas A. Hart, Jr.

Thomas A. Hart, Jr.

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SEP 27 1996

Before The

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Section 257 Proceeding to) GN Docket No. 96-113
Identify and Eliminate)
Market Entry Barriers for)
Small Businesses)
)

COMMENTS OF FAYE BROWN-BLACKWELL, KZWA-FM

Faye Brown-Blackwell, through undersigned counsel, hereby submits these Comments in the above-captioned proceeding.

The Federal Communications Commission ("FCC" or the "Commission") seeks comment on the characteristics of small telecommunications businesses and the market entry barriers they encounter, as well as the obstacles that deter individuals from starting small telecommunications businesses. Notice of Inquiry, GN Docket No. 96-113, at ¶ 3. The Notice of Inquiry also solicits comment on the unique entry barriers faced by small businesses owned by minorities and women. Id. Finally, the Commission seeks information on ways to fulfill its mandate under Section 309(j) to further opportunities for small businesses owned by minorities and women.

The Commission has found that the primary impediment to participation by minority or women-owned firms is the lack of access to capital. Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Fifth Report and Order, 9 FCC Rcd. 5532, 5535 (1994). Yet, more insidious barriers exist even if the minority or female owner does raise the necessary capital. The perception that designated entities' money has less

value and that they are inherently less credit-worthy; the predisposition of decision-makers to dispense unequal justice and apply unequal standards; the tendency of administrative and judicial bodies to overlook equitable solutions to problems faced by designated entities; and the reluctance of agencies like the FCC to enforce potential abuses affecting designated entities all are subtle barriers to entry just as imposing as lack of finances. Faye Brown-Blackwell faces such impediments.

BACKGROUND

In 1987, Ms. Blackwell, an African-American, was contacted by a broadcasting consultant for attorney and financier Kent Foster concerning the possibility of identifying a group to apply for a FM radio license in Lake Charles, Louisiana. Kent Foster was interested in identifying a minority female, local to the area, having some past broadcast experience. Carol Collins, Faye Blackwell, Vera S. Foster (Kent Foster's mother), and Ralph Frank agreed to form a Limited Partnership called B&C Broadcasting of Lake Charles ("B&C") to apply for the FCC authorization on Channel 287C-2 at Lake Charles, Louisiana. Blackwell and Collins were designated the General Partners with one half voting rights and a 12 1/2% equity interest each. Mrs. Foster was deemed a Limited Partner with a 66 2/3% non-voting equity interest, and Mr. Frank a Limited Partner with an 8 2/3% non-voting equity interest.

The Limited Partnership was to be capitalized in the amount of \$8,000, and the Limited Partners represented that they would make available \$350,000 to construct and operate the proposed station. The Limited Partners also agreed to loan B&C Broadcasting an additional \$150,000 if necessary. Kent Foster was not listed as

having an ownership interest in B&C since his appointment by President Ronald Reagan to the Overseas Private Investment Council created a conflict of interest. Nonetheless, he was intimately involved with the entire proposed financing process and agreed to loan money to B&C.

In June, 1988, the window for the Lake Charles station allocation opened. B&C subsequently merged with Sabine Broadcasting in 1991 to form B&C Broadcasting, Inc. as the entity applying for a construction permit. John Henning and Ed Metoyer were the Sabine principals joining the group. Carol Collins subsequently sold her shares to Econ, Inc. As of February 1993, the ownership percentages were as follows: Faye Blackwell owned .1220%; Vera Foster owned .3585%; John Henning owned .3707%; Ralph Frank owned .0902%; Ed Metoyer owned .0098% and Econ, Inc. owned .0488%.

On March 24, 1992, the Commission awarded B&C Broadcasting, Inc. the construction permit. Taking into account the extensions filed by the company for time to complete station construction, the construction permit was scheduled to expire on September 24, 1993. Revised cost estimates were presented and forwarded to Kent Foster's Washington, D.C. office. Ms. Blackwell repeatedly issued a cash call to the previous limited partners and Kent Foster requesting the pledged funds for construction prior to the expiration of the permit.

Mr. Foster named Susan Crouch (his sister) and Vera Foster as partners in the ownership group. In actuality, however, Kent Foster at all times was the real party in interest. Record evidence of several tele-conference discussions among Attorney

Harry Martin, Kent Foster and Ms. Blackwell reveals that it was Kent Foster who, allegedly on behalf of Ms. Foster, communicated with Ms. Blackwell on corporation matters and made the significant decisions regarding Ms. Crouch's and Ms. Foster's shares. In 1993, before operations had begun, Ms. Blackwell began to suspect that the ownership by Ms. Crouch and Ms. Foster was ostensibly a "sham" to take advantage of the FCC's female enhancements.^{1/}

It gradually became commonplace for B&C shareholders to be issued varied amounts of stock without recorded action of the Board of Directors or without recorded action on the minutes of the corporation records. B&C was required to complete construction of its transmitter facility by July 10, 1994, or at least to make concrete financial commitments to begin facilities construction. Payments to contractors were required to be made in advance for initiating construction. Kent Foster stopped paying money to B&C pursuant to the original limited partnership agreement. B&C, therefore, conducted cost analyses and determined the amount of stock to be issued to cover the costs of construction.

Despite continued assurances, neither Vera Foster nor Sue Crouch elected to invest by purchasing shares. Neither did Kent Foster honor his commitment under the original limited partnership agreement. In fact, had Ms. Blackwell not demonstrated due diligence, to remedy the lack of capital, B&C would have lost the station. Ms. Blackwell executed a collateral mortgage note on May 13, 1994 in the amount of \$150,000 and contributed additional funds to purchase 385 shares of stock. On that same date, by wire

^{1/} At the time, the Commission had not suspended its minority and female ownership policies.

transfer, preliminary payments for construction of the radio tower in the amount of \$33,831.50 and \$22,275.00 in connection with construction on the transmitter tower.

The actual procedure by which Ms. Blackwell purchased the shares is the matter in dispute in the Lake Charles District Court. The corporation issued 70 shares of stock on May 16, 1994 in lieu of a cash repayment of a debt of \$32,000 that the corporation owed to her. She acquired an additional 325 shares in accordance with a stock offering approved by the Board of Directors on April 23, 1994. Ms. Blackwell was the sole member present at a prior advertised Board of Director's meeting on that date, but had discussed the matter with Board Member Larry Bellow, who had given her his proxy in order to issue the additional stock. Vera Foster and Sue Crouch (at the behest of Kent Foster) thereupon sued Ms. Blackwell seeking to cancel the issuance of the 325 shares, alleging that the shares' issuance and purchase by Ms. Blackwell prevented them from exercising their preemptive rights and from purchasing a proportionate share of the stock. However, Foster and Crouch could produce no evidence that either had timely responded to repeated requests for them to contribute financing or to purchase additional shares.

Judge Gregory D. Lyons of the 14th Judicial District Court, Parish of Calcasieu, agreed with Ms. Foster and Ms. Crouch that the corporate bylaws did not authorize Mr. Bellow to give Ms. Blackwell a proxy for his vote, and that the issuance must be cancelled. Despite the fact that he felt it "unfortunate that the only reason this corporation survived was through the actions of Ms. Blackwell in attempting to save [the] corporation," Judge Lyons ordered the

shares cancelled. However, he did not cancel the 14 shares issued to Sue Crouch on the same date and under the same terms and conditions as Ms. Blackwell's. Ms. Blackwell requested and has been granted a hearing seeking a new trial, scheduled for October 18, 1996.

Ms. Crouch and Ms. Foster frivolously argue that they were not given the opportunity to purchase their proportionate shares of the corporation's stock. Ms. Crouch and Ms. Foster had more than ample opportunities from March 24, 1992 (when the construction permit was granted) until July 10, 1994 when the "extension" was set to expire. Had the two been so concerned about their financial obligations to the corporation of remaining the majority stockholders, they had more than two years to purchase their pro rata shares of stock.

Yet, when the station was on the verge of being forfeited, neither of them came forward with pledged financing. Furthermore, Mr. Foster did not contribute the finances he had pledged pursuant to the agreement of limited partnership. Sue Crouch had not attended a Board of Director's meeting until after the dispute arose, and had never formally accepted her appointment to the Board. Again at the behest of Kent Foster, Ms. Foster and Ms. Crouch refuse to reorganize the ownership structure to reflect the actual equity contributed by Ms. Blackwell. Although Ms. Blackwell contributed by far the greatest equity, the Fosters and Ms. Couch seek to dilute her ownership and control of the station.

Furthermore, just after the station went on the air in August, 1994, evidence began to appear that Mr. Foster had been negotiating to immediately sell the station in apparent contravention of the

Commission's anti-trafficking rules. Ms. Blackwell began to receive communications from Harry Ladas of Ladas Broadcasting Company, and from Sunbelt Media, Inc. with offers to purchase her controlling stock. Ms. Blackwell rejected those offers, and later found out that Kent Foster was the architect of the deals.

COMMENTS

Ms. Blackwell represents the best and the worst of the FCC. In one respect, she seized the opportunity, against all odds, to become a minority female owner of an FM radio station. The FCC's dream of increased broadcast ownership by minorities and women has proven to be a nightmare. Ms. Blackwell was virtually ignored when it came to her attention, and she reported to the Commission that Kent Foster might be abusing the Commission's process. Ms. Blackwell contacted Norman Goldstein, Chief of the Complaints & Political Programming Branch, asking him to investigate. In a letter dated August 2, 1996, Mr. Goldstein characterized her concerns as a "private contractual dispute" and informed her that the Commission "does not normally intervene in [that] type of private contractual dispute." See Norman Goldstein letter dated August 2, 1996 to Faye Blackwell.

Nonetheless, this "private contractual dispute" could have very dire consequences for the public interest. KZWA is rated by Arbitron as the number one station in the market in the 18-34 year old demographic segment. As a minority-owned station, the diversity of viewpoint has proven to be critical to the urban population. Absent the minority ownership and distinct

programming, a key segment of the population might be underserved or even unserved.

Should Ms. Blackwell, the General Manager and majority black voting shareholder, lose this dispute, Kent Foster will surely achieve his goal of trafficking the station to an owner possibly not integrated into the service community. Not only will the public interest not be served, but evidence exists that Kent Foster may have anticipated this result and planned to sell the station at the time of purchase. Such activity should raise significant questions with the Commission. Instead, however, the Commission ignored the allegations and termed the matter a "private contractual dispute".

Although cursorily acknowledging the possibility of real party in interest and other concerns, the Commission did not investigate the allegations. Kent Foster has appeared before the FCC many times and is a well-known player in the industry. He is a former political insider with former presidential contacts. Mr. Foster has become quite successful at penetrating broadcast markets by seeking out the "high profile" minorities or women with broadcast experience and convincing them to act as unwitting "fronts" for his true ownership aspirations. In fact, the Commission has documented a number of allegations very similar to that of Ms. Blackwell. Kent Foster lured minority female professionals to the forefront allegedly partnering them with his mother and his sister while himself being the real party in interest. Other complaints have alleged that Mr. Foster pledged capital only to renege on the offer at significant moments in the deal closing process. The Commission, however, has decided to look the other way.

The Commission should recognize that lack of financing is not the only barrier to entry faced by minorities and women or small businesses. The failure of the Commission to enforce its rules, particularly where the ownership interests of minority or women owners and the interests of the public in general are affected, can prevent entry into the marketplace as well.

Lack of sophistication may be just as excluding. Many small businesses simply have not encountered the type of "insider wrangling" prevalent with larger, better financed firms. In addition, many small firms have not developed the political and business contacts necessary to fend off not just competitors, but disguised suitors as well.

One way the Commission could become more sensitized to the problems faced by small businesses with lack of access to capital and to contacts is to provide the environment to develop that access. The Commission could host a series of meetings between industry big businesses and small businesses and facilitate cooperative efforts.^{2/} Not only will the small firms benefit from developing relationships with the more "connected" large firms, the larger firms can access members of companies which could provide crucial or unique niche market support.

The Commission has consistently demonstrated its lack of concern and apathy for addressing the unique needs of small minority-owned businesses. This proceeding is being conducted now

^{2/} The FCC's proposed incubator program whereby existing mass media entities would be encouraged, through ownership-based incentives, to assist new entrants simply does not go far enough toward encouraging access. See Notice of Inquiry at p. 17 (citing Minority/Female Mass Media Ownership NPRM, 10 FCC Rcd. at 2788).

because Congress has mandated it under Section 257 of the 1996 Telecommunications Act. Congress found that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe under-representation of minorities in the media of mass communications, as it has adversely affected their participation in other sectors of the economy as well." Notice of Inquiry, GN Docket No. 96-113 at p. 15 (quoting H.R. Conference Report No. 97-765, 97th Cong., 2d Sess., 1982 at 43.) The Commission, however, has taken measures in the opposite direction by revamping its Equal Employment Opportunity rules and reneging on many of the incentives upon which minorities and women have come to rely such as the distress sale policy, and the tax certificate policy.

A much more formidable barrier to entry than either Commission apathy or lack of access to capital is the changing political mood of our legislative, executive and judicial branches. The U.S. Supreme Court in Adarand Constructors v. Pena, 115 S. Ct 2097 (1995) held that racial classifications are subject to strict scrutiny. That ruling has led to the suspension or elimination of race or gender-based incentives while the Commission and other agencies examine whether a compelling interest exists for maintaining the provisions.

The Commission now requires record evidence of the link between past discrimination and the incentives. See Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Radio Service Spectrum Cap, Notice of Proposed Rulemaking, WT Docket No. 96-59, GN Docket No. 90-314 (released March 20, 1996) ("Our present record in

support of race-based rules is insufficient to demonstrate a compelling interest under the strict scrutiny standard to support race-based provisions of the F block because it reflects generalized assertions of discrimination . . ."). However, record evidence is not always available. For example, the Notice of Inquiry in this proceeding asks commenters to submit evidence of past or current discrimination based on race or gender. It is suggested that the evidence be derived from academic research studies, adjudications, legislative findings, statistical data, and personal accounts. Yet, how can studies be more convincing than the Commission's own recognition that participation in the marketplace is greater by minorities and women when incentives are in place than when they are not? Notice of Inquiry, GN Docket No. 96-113, at 19.

If the Commission is truly concerned with increasing the level of participation by minorities and women in the communications industry, it must stop burying its head in the sand attempting to justify race-based programs. Instead, it may simply reactivate some of the provisions the Commission itself already has determined are effective at increasing participation. For example, the distress sale and tax certificate policies must be reactivated to give minority and women a fighting chance to compete.

Furthermore, following the D.C. Circuit ruling in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) (finding that the integration credit, upon which the minority/female broadcast policy is based, was arbitrary and capricious), the Commission suspended comparative hearings altogether. The Commission also attempted to lessen the impact of that blow to female participation by seeking public

comment on the nexus between female ownership and diversity of programming. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking, 10 FCC Rcd. 2788 (1995).

Nonetheless, nexus or no nexus, without comparative hearings, female and minority applicants don't have a chance of competing for ownership of broadcast properties. As the Commission recognized, participation by those groups is greater with incentives in place. Without those incentives, the broadcast ownership statistics are destined to look much as they did before the incentives were employed -- predominantly white male.

CONCLUSION

The Commission seeks comment on the barriers faced by minorities, women and small businesses to their entry into the communications marketplace. However, the Commission must also recognize intangible barriers that may not be readily apparent. The Commission must be aware that the agency itself may be a barrier to the entry of designated groups.

Ms. Blackwell is just an example of a much larger problem of the Commission's failure to monitor its licensees for abuses and shams. The Commission should be more sensitive to the potential abuses of process conducted by Kent Foster and others like him. Instead, the Commission too often has adopted a "wait and see" attitude and thus, only gives lip service to the problems of "fronts" in the industry. In many cases, the "front" does not appear as here until after the license has been granted. The Commission's rules need to be strictly enforced in situations where a "passive investor" like Kent Foster takes a course of action

clearly designed to wrest power and ownership from the majority equity shareholder. Mr. Foster has underestimated the resolve and commitment of ladies such as Ms. Blackwell to their respective communities.

Respectfully submitted,

By:

Thomas A. Hart, Jr.
Thomas A. Hart, Jr.
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1250 Connecticut Avenue, N.W.
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(202) 637-9000

August 23, 1996

EXHIBIT A

AFFIDAVIT OF FAYE BROWN-BLACKWELL

PARISH OF CALCASIEU)
) SS:
STATE OF LOUISIANA)

5. In 1987, Kent Foster contacted me to discuss the possibility of me becoming the owner of KZWA-FM. Although Sue Crouch and Vera Foster (Kent Foster's sister and mother respectively) exist on paper as shareholders of B & C, it has been Kent Foster that has remained in the forefront of attempting to make ownership' and other decisions, and to dictate how the corporation should be structured. In my opinion, Mr. Foster is motivated by a desire to gain majority ownership without paying a majority of equity.

6. On and before August 1993, Mr. Foster repeatedly assured me that he would honor commitments he had made to contribute capital necessary to complete station buildout and to begin broadcast. However, even when absolute deadlines approached, and B & C was on the verge of losing the station, Mr. Foster still refused to make his promised capital contribution. In my opinion, Mr. Foster's actions were designed to squeeze me out as the majority stockholder and to subsequently take over the station.

7. I have complained to the Federal Communications Commission, to members of Congress and the Courts that I have great concerns about Mr. Foster's status as the actual real party in interest instead of Ms. Foster and Ms. Crouch. I also believe that Mr. Foster is attempting to effectuate an unauthorized transfer of control, whereby he may circumvent the FCC's processes, and do indirectly that which the FCC would prevent him from doing directly. Finally, I am concerned that as a result of Mr. Foster's lack of candor with me, other Directors and the FCC regarding his true interest in the station, B & C might face possible discipline for misrepresenting facts in its application.

The facts herein are true and accurate to the best of my knowledge and belief.

Faye Brown-Blackwell
Faye Brown-Blackwell

Subscribed and sworn to before me this 20th day of August, 1996.

Anthony L. Santis
Notary Public

My Commission Expires:

with Life